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FIRST GENERAL COUNSEL'S REPORT

MUR 6819

DATE COMPLAINT FILED: May 13, 2014

DATE OF NOTIFICATION: May 20, 2014

DATE OF LAST RESPONSE: May 30, 2014

DATE ACTIVATED: September 10, 2014

ELECTION CYCLE: 2014

EXPIRATION OF SOL: Earliest: April 19, 2019

Latest: May 13, 2019

COMPLAINANT: Darren Sutphen

RESPONDENTS: Al Krulick  
Krulick for Congress and Al Krulick in his official  
capacity as treasurer

RELEVANT STATUTES AND REGULATIONS: 52 U.S.C. § 30102(e)(1)<sup>1</sup>  
52 U.S.C. § 30103(a), (b)  
11 C.F.R. § 101.1(a)  
11 C.F.R. § 102.1(a)  
11 C.F.R. § 102.2(a)(1), (a)(1)(iv)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Complaint alleges that Al Krulick, a 2014 Congressional candidate, filed his Statement of Candidacy late, and that his principal campaign committee, Krulick for Congress ("Committee"), filed its Statement of Organization late. Respondents assert that the Commission should dismiss the Complaint because Krulick and the Committee filed the Statement of Candidacy and Statement of Organization on time.

<sup>1</sup> On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

Based on the available information, we recommend that the Commission find no reason to believe that Krulick violated the Act by filing his Statement of Candidacy late and no reason to believe that that the Committee violated the Act by filing its Statement of Organization late. We further recommend that the Commission close the file.

## II. FACTS

Alan Krulick was a 2014 Non Party Affiliated ("NPA") Congressional candidate in Florida's 7th Congressional District.<sup>2</sup> The Commission received Krulick's Statement of Candidacy and Statement of Organization on May 12, 2014.<sup>3</sup> The Statement of Candidacy designated Krulick for Congress as Krulick's principal campaign committee and Krulick as the Committee treasurer.<sup>4</sup> The Committee, on July 5, 2014, filed its July 2014 Quarterly Report disclosing its activity from April 1, 2014, to June 30, 2014.<sup>5</sup>

Prior to filing his Statement of Candidacy and designating a principal campaign committee, Krulick posted several communications on YouTube and Facebook. On April 4, 2014, Krulick posted a video to YouTube titled "Al Krulick for Congress." Compl. at 1, Attach.

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<sup>2</sup> Krulick lost the general election on November 4, 2014.

<sup>3</sup> Krulick's signature on each of the forms is dated April 28, 2014, and the envelopes were postmarked May 2 and sent via first class mail. *See* Statement of Candidacy, Al Krulick (May 12, 2014) and Statement of Organization, Krulick for Congress (May 12, 2014). Krulick asserts that he completed and mailed the forms on April 28. *Resp.* at 2 (June 3, 2014). Krulick also states that he expected to receive confirmation from the Commission of its receipt of his forms or be able to locate the forms on the Commission's website and when he did not receive the expected confirmation and could not locate the documents on the Commission's website, he contacted the Commission on May 12, 2014, and was informed that the forms had not been received. *Id.* at 1-2. Krulick mailed a second set of forms via certified mail on May 13, after being informed the previous day that the Commission had not yet received the original forms. On May 19, 2014, the Commission received the second set of forms.

<sup>4</sup> Statement of Candidacy, Al Krulick (May 12, 2014) and Statement of Organization, Krulick for Congress (May 12, 2014).

<sup>5</sup> *See* July 2014 Quarterly Report, Krulick for Congress (filed July 5, 2014).

(May 13, 2014).<sup>6</sup> The video's caption stated that "Reformer Al Krulick is running against 22-year incumbent John Mica in Florida's 7th Congressional District in 2014," and listed a "Krulick for Congress" website and phone number. *Id.* The video, which was four minutes long and featured Krulick speaking directly to the camera in his home, criticized Congressman John Mica's positions on a variety of issues and stated the ways in which his views differed on these same issues. *Id.* Krulick ended the video by stating that he was "plan[ning] to run" for Congressman Mica's seat in the upcoming election and that he wanted "to go to Congress to help represent the real people in [his] district."<sup>7</sup> *Id.*

On April 7, 2014, Krulick created a Facebook page titled "Krulick for Congress." *Id.*<sup>8</sup> On the same day, Krulick posted a link to the YouTube video and made an additional posting on the Facebook page. *Id.* The additional posting stated:

The race is on! However, according to Florida statutes, I will need to "qualify" for my Congressional campaign by the end of April. That means that I need to post a fairly hefty qualifying fee with the Secretary of State in order to get on the official ballot. While I intend to run a low-cost campaign (there is no way that I will be able to compete money-wise against John Mica's millions in special interest financing), I can't get around having to pay the fee if I want to be the Democatic [sic] candidate from Florida's 7th C.D.

So, I need to ask any and all to help me defeat a 22-year Republican incumbent who is against raising the minimum wage, does not support medical marijuana, voted over 50 times to repeal the Affordable Care Act, and is a climate change denier in thrall to the oil companies, by making a contribution to my campaign coffers.

<sup>6</sup> See also Al Krulick for Congress, Posting to YouTube (Apr. 4, 2014), <http://www.youtube.com/watch?v=MTvctNRqVZw>.

<sup>7</sup> At the conclusion of the video, Krulick stated that he "approved the message" and listed his committee's name, Krulick for Congress and a contact phone number. *Id.*

<sup>8</sup> See also Krulick for Congress, Comment to FACEBOOK (Apr. 7, 2014, 2:05 PM), <https://www.facebook.com/KrulickForCongress/posts/305532909601128>.

1 While my official website is under construction, the best way to help me out is  
2 by sending me a check, for whatever amount you can spare, (\$50 or \$100 would  
3 be great). . . .

4  
5 *Id.*<sup>9</sup>

6 Between April 7 and April 11, 2014, the Facebook page provided updates on Krulick's  
7 fundraising efforts for the ballot qualifying fee. The Complaint makes specific reference to an  
8 April 11 Facebook posting and provided a copy of said posting. Compl. at 1, Attach.<sup>10</sup> This  
9 posting stated, in relevant part:

10 The response to my announcement regarding my intention to run for Congress  
11 and the kind attention many have paid to the Krulick for Congress Facebook page,  
12 [sic] has been extremely gratifying. Thank you for your words of support . . . .  
13 [T]here is still a need to raise, at least, a minimal amount of loot in order to become  
14 a viable candidate. The qualifying fee for a Congressional race is \$10,440! This  
15 amount is due at the Secretary of State's office no later than noon, on May 2nd.  
16 That means that I only have a few more weeks to collect the necessary money.  
17 The good news is, that only after a week of fundraising, I am almost half way there.

18  
19 *Id.*

20 Another Facebook posting on April 22, 2014, stated, in relevant part:

21 Qualifying is getting close and I still have a ways to go. If I can't raise  
22 the necessary fee within the coming week in order to run as a Democrat,  
23 I am faced with two choices: either I bow out of the race and return any  
24 and all contributions, or I decide to enter the race as an NPA, or No Party  
25 Affiliation, which requires a considerably smaller up-front ante.

26  
27 *Id.*<sup>11</sup>  
28

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<sup>9</sup> Krulick for Congress, Comment to FACEBOOK (Apr. 7, 2014, 2:34 PM),  
<https://www.facebook.com/KrulickForCongress/posts/305537089600710>;  
Krulick for Congress, Comment to FACEBOOK (Apr. 7, 2014, 2:37 PM)  
<https://www.facebook.com/KrulickForCongress/posts/305537609600658>.

<sup>10</sup> See Krulick for Congress, Comment to FACEBOOK (Apr. 11, 2014, 1:28 PM),  
<https://www.facebook.com/KrulickforCongress/posts/307006669453752>.

<sup>11</sup> Krulick for Congress, Comment to FACEBOOK (Apr. 22, 2014, 7:25 PM),  
<https://www.facebook.com/KrulickforCongress/posts/310872805733805>.

On April 30, 2014, a Facebook posting stated, in relevant part:

A few hours ago, I sent my qualifying fee and my Federal Candidate Oath form to the Secretary of State's office in Tallahassee. On Friday, May 2<sup>nd</sup>, at 12 noon, I will become an official candidate for the United States

Representative from Florida's 7th Congressional District. I will be listed on the November 4<sup>th</sup> ballot as Al Krulick (NPA) – No Party Affiliation.

*Id.*<sup>12</sup>

The posting also noted that the fee required to qualify as a NPA candidate was approximately \$3,500 less than what would be necessary to qualify as a Democratic candidate. *Id.*

The Complaint asserts that Krulick became an official candidate on two possible dates:

1) April 4, 2014, when he posted the YouTube video discussing his intent to run for office and listing his committee's website and phone number; or 2) April 7, 2014, when he "explicitly requested campaign contributions to qualify for the ballot" on the Facebook page. Compl. at 1. The Complaint contends that Krulick's candidacy was "further manifest" on April 11, 2014, when he announced he raised more than half of the necessary \$10,440 ballot qualifying fee, demonstrating that he had received \$5,000 in contributions by that date. *Id.*

Based on this information, the Complaint alleges that Krulick failed to file timely a Statement of Candidacy, designating a principal campaign committee within 15 days of becoming an official candidate. *Id.* The Complaint further alleges that the Committee failed to file timely a Statement of Organization within 10 days after being designated as Krulick's principal campaign committee and failed to designate a treasurer on its Statement of Organization prior to accepting contributions. *Id.*

<sup>12</sup> See also Krulick for Congress, Comment to FACEBOOK (Apr. 30, 2014, 7:21 PM), <https://www.facebook.com/KrulickforCongress/posts/313807885440297>.

1 The Response denies the allegations in the Complaint and asserts that Krulick was  
2 "testing the waters" between April 4, 2014, and April 28, 2014, and therefore not required to file  
3 a Statement of Candidacy or Statement of Organization prior to that time. Resp. at 1. The  
4 Response claims that while Krulick spoke of his "intention to run for office," he made it  
5 "perfectly clear" that "he was not an official candidate and would not be one until he had raised  
6 the \$5,000 and submitted the appropriate FEC forms." *Id.* at 2. The Response further contends  
7 that Krulick became an official candidate under the Act not when he spoke of his intentions to  
8 run for office on social media but rather when he reached the \$5,000 contribution threshold,  
9 which was April 28, 2014. *Id.* at 3. The Response provides a purported copy of the Committee's  
10 bank statement, which indicates that the Committee exceeded \$5,000 of funds in its bank account  
11 on April 28, 2014. *Id.*, Attach. Further, the Response claims that Krulick's statement that he  
12 was "more than half way there" in raising the required \$10,440 ballot qualifying fee was "merely  
13 hyperbolic" and "not actually or factually correct" because Krulick had only received "promises  
14 from a number of people" for donations rather than the actual donations. *Id.* at 3.

### 15 III. LEGAL ANALYSIS

16 Under the Act, an individual must file a Statement of Candidacy, designating the  
17 candidate's principal campaign committee, within fifteen days of becoming a candidate.  
18 52 U.S.C. § 30102(e)(1) (formerly 2 U.S.C. § 432(e)(1)); *see also* 11 C.F.R. § 101(a). The  
19 principal campaign committee must file a Statement of Organization, designating a committee  
20 treasurer, no later than ten days after the candidate's designation. 52 U.S.C. § 30103(a)  
21 (formerly 2 U.S.C. § 433(a)).

22 An individual becomes a "candidate" when he or she receives or makes in excess of  
23 \$5,000 in contributions or expenditures. 52 U.S.C. § 30101(2) (formerly 2 U.S.C. § 431(2)).

1 However, the Commission regulations provide that the terms "contribution" and "expenditure"  
2 do not include funds or payments made solely to determine whether an individual should become  
3 a candidate. 11 C.F.R. §§ 100.72(a); 100.131(a).<sup>13</sup> Permissible "testing the waters" activities  
4 include, but are not limited to, conducting polls, making telephone calls, and traveling. *Id.*

5 When an individual raises or spends more than \$5,000 *and* engages in activities  
6 indicating that he or she has decided to run for a particular office, the "testing the waters"  
7 exemption is no longer available. 52 U.S.C. § 30101(2) (formerly 2 U.S.C. § 431(2)).  
8 Examples of activities that indicate that an individual has decided to become a candidate include,  
9 but are not limited to: (1) using general public political advertising to publicize his or her  
10 intention to campaign for federal office; (2) raising funds in excess of what could reasonably be  
11 expected to be used for exploratory activities, or undertakes activities designed to amass  
12 campaign funds that would be spent after he or she becomes a candidate; (3) making or  
13 authorizing written or oral statements that refer to him or her as a candidate for a particular  
14 office; (4) conducting activities in close proximity to the election or over a protracted period of  
15 time; and (5) taking action to qualify for the ballot under state law. 11 C.F.R. §§ 100.72(a),  
16 100.131(b).

17 According to the Complaint, Krulick became a candidate when he announced his "intent"  
18 and "plans" to run for office in Florida's 7th Congressional District through a YouTube video on  
19 April 4 and Facebook postings on April 7 and 11. Compl. at 1. Krulick, however, asserts that he  
20 was "testing the waters" from April 4, 2014 (when he posted a YouTube video stating his

<sup>13</sup> So long as an individual is "testing the waters," he or she is not required to file a Statement of Candidacy or file disclosure reports with the Commission unless and until the individual subsequently decides to run for federal office *or* conducts activities that indicate he or she has decided to become a candidate. *See id.*; *see also* Advisory Op. 1979-26 (Grassley). All funds raised and spent for "testing the waters" activities are, however, subject to the Act's limitations and prohibitions. 11 C.F.R. §§ 100.72(a), 100.131(a).

1 "plans" to run for Congress) to April 28, 2014 (when he crossed the \$5,000 threshold in  
2 contributions and completed his Statement of Candidacy). Resp. at 1.

3 Our review of the available information indicates that Krulick did not exceed the \$5,000  
4 threshold until April 28, 2014. Although Krulick's Facebook posting on April 11 suggested that  
5 he had collected more than \$5,000 in donations by that date, the Committee's bank statement  
6 reflects that Krulick had only raised \$2,000 as of April 11, and did not exceed the \$5,000  
7 threshold until April 28, when the Committee's bank account balance became \$5,865. See  
8 Compl., Attach. Further, the Response acknowledges that the April 11, 2014, posting was  
9 "merely hyperbolic" and "not actually or factually correct." Resp. at 3.

10 On the day that Krulick exceeded the \$5,000 threshold in contributions, April 28, 2014,  
11 he completed and signed the Statement of Candidacy designating Krulick for Congress as his  
12 principal campaign committee and the Committee's Statement of Organization designating  
13 himself as treasurer. Both documents were postmarked on May 2, 2014, and received by the  
14 Commission on May 12, 2014, within the fifteen day and ten day time period, respectively,  
15 required by Commission regulations.

16 Accordingly, we recommend that the Commission find no reason to believe that Alan  
17 Krulick violated 52 U.S.C. § 30102(e) (formerly 2 U.S.C. § 432(e)(1)) and 11 C.F.R. § 101.1(a),  
18 and no reason to believe that Krulick for Congress and Al Krulick in his official capacity as  
19 treasurer violated 52 U.S.C. § 30103(a) (formerly 2 U.S.C. § 433(a)) and 11 C.F.R. §§ 102.1(a),  
20 102.2(a)(1), (a)(1)(iv) by failing to file the required forms within the time period specified by the  
21 Act and Commission regulations.

#### 22 IV. RECOMMENDATIONS


- 23 1. Find no reason to believe that Al Krulick violated 52 U.S.C. § 30102(e)(1) and  
24 11 C.F.R. § 101.1(a).




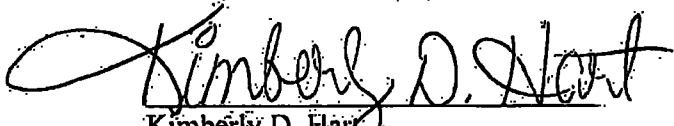
2. Find no reason to believe that Krulick for Congress and Al Krulick in his official capacity as treasurer violated 52 U.S.C. § 30103(a) and 11 C.F.R. §§ 102.1(a), 102.2(a)(1), (a)(1)(iv).
3. Approve the attached Factual and Legal Analysis.
4. Approve the appropriate letters.
5. Close the file.

Date

12-16-14

  
Kathleen M. Guith  
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for Enforcement

  
William A. Powers  
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